

AMERICANS FOR PROSPERITY

26 March 2009

Broadband Technology Opportunities Program
U.S. Department of Commerce
Room 4812
1401 Constitution Avenue, N.W.
Washington, DC 20230

RE: Docket Number: 090309298-9299-01

Americans for Prosperity (AFP) is submitting the following recommendations and the attached policy paper in response to the National Telecommunications and Information Administration's (NTIA) request for public comments in regard to the proper establishment of the Broadband Technology Opportunities Program (BTOP), as instructed under Section 6001 of the American Recovery and Reinvestment Act of 2009 (ARRA).

Americans for Prosperity is a 501(c)(4) non-profit organization that advocates free market principles, including: lower taxes, smaller government, elimination of burdensome regulation and increased consumer choice in health care and education. AFP has chapters in over 20 states, represents more than 600,000 Americans and mobilizes grassroots activists to affect public policy.

AFP is engaged in the BTOP issue because the Internet remains one of the few bastions of free enterprise in the over-regulated American marketplace. The government's insistence on injecting \$7.2 billion—as allocated in the ARRA—to influence the development, maintenance and regulation of the nation's broadband networks is troubling. Although we believe that the market has brought continuous innovation to the Internet and has unquestionably been the primary force behind its success, we fear that the BTOP program has the potential to irrevocably damage that success.

We therefore submit the following recommendations for BTOP's implementation:

- **Avoid Crowding Out:** BTOP should avoid funding projects in areas where private Internet service providers already exist. § 6001(b)(1) of the ARRA clearly states the *primary purpose* of BTOP is to “provide access to broadband service to consumers residing in unserved areas of the United States.” AFP believes that the definition of ‘unserved’ should be taken to mean areas of the country that do not currently have access to broadband Internet service, including but not limited to areas that are too rural to be reached by traditional broadband business models. Projects that are subsidized with

taxpayer dollars will have a distorted competitive advantage and risk ‘crowding out’ existing private Internet service providers and private capital investment.

- **Beware Unsustainable Projects:** BTOP should be wary of committing capital outlays to projects that will not be financially sustainable once they are established. NTIA should require projects to provide viability plans that do not include future subsidies from BTOP or reliance on other federal, state or local taxpayer subsidies to remain afloat. AFP has profiled the difficulty that many municipal broadband projects have had meeting this basic standard (see attached policy paper).
- **Prioritize Private Projects:** BTOP should give priority to ventures proposed by private businesses that are seeking to either expand or establish their position as an Internet service provider. The past decade is littered with examples of municipalities failing in their attempts to run broadband networks as utilities, either with or without private partnerships. For every success story (such as Bristol, Virginia) there are a dozen examples of failed projects that wasted taxpayer dollars on networks that provided weak signals, unreliable connections and uncompetitive pricing. BTOP should examine the record of municipal broadband failures and should not commit further taxpayer money to substandard ventures.
- **Role of the State:** Although the ARRA has stressed the importance of speedy implementation in § 6001(d)(1)-(3), AFP urges NTIA to carefully consider potential projects in an effort to eliminate waste, corruption and duplicity. One proposed suggestion to expedite the BTOP process is to enlist the help of state broadband offices in selection and prioritization of proposals. AFP opposes this recommendation because states often have separate broadband plans that may also be seeking funding through BTOP. Allowing the states to prioritize projects in a funding process in which they are also participating creates a serious conflict of interest. This conflict will inevitably benefit state and municipal projects at the expense of private industry; the negative consequences of which have been outlined above and in the attached policy paper.
- **Do Not Legislate through Contracts:** The telecommunications community remains embroiled in a national debate over the role of nondiscrimination or so-called net neutrality in Internet regulatory policy. While this debate continues, it is inappropriate for NTIA to add nondiscrimination or interconnection requirements to BTOP contracts. NTIA is not empowered to write legislation and a decision of this magnitude should be left to Congress. If and when such principles are ever expressed as the will of Congress and signed into law by the president, BTOP contracts would be subject to these ill-conceived regulations along with the rest of the country.

Americans for Prosperity remains committed to engaging with NTIA on the BTOP process and will continue to monitor the program as it awards taxpayer dollars to broadband projects throughout the next two years.

Please do not hesitate to contact us if you have any questions or require clarifications on either our above comments or the attached policy analysis.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Valvo', with a stylized flourish at the end.

James Valvo
Assistant for Policy and Public Affairs

Americans for Prosperity
1726 M Street, NW
10th Floor
Washington, DC 20036

(202) 349-5514
james.valvo@afphq.org